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SUBJECT: UNRESOLVED REGULATIONS STILL STIFLE ARGENTINE AGRICULTURAL
SECTOR

1. (SBU) Summary: GoA changes to the export registration process during the agricultural conflict have given its independent Agricultural Control Office (ONCCA) broad authority and control over commodity exports. Time limits for loading commodities and a law that retroactively establishes export taxes have created much uncertainty, cost, and inefficiency for exporters. Ambassador met with President of ONCCA, Ricardo Echegaray, to encourage ONCCA to address concerns raised by American exporters who have been negatively affected by the regulations. A later meeting with President of Cargill Argentina, Cristian Sicardi, revealed the

significant impact that sometimes arbitrary enforcement of ONCCA regulations has had on the company and sector. ONCCA subsequently made some changes to the export process, but it remains a burdensome process for exporters. Despite the fact that GOA officials have begun a dialogue with the agricultural sector's Mesa de Enlace coordinating committee ("Liaison Board"), Secretariat of Agriculture proposals have been largely non-substantive. Post contacts indicate that Secretary of Agriculture Cheppi is seeking more time to develop appropriate GOA policies to address sector concerns. As such, farmers are seeking meetings with congressmen and are committed to maintaining political pressure to effect long-term policy changes.
End Summary

ONCCA - ARGENTINA'S AGRICULTURAL CONTROL OFFICE

2. (SBU) In May 2008, in the midst of the farm sector strike, President Christina Kirchner (CFK) signed a decree (764/2008) that changed the export registration process for agricultural commodity exporters (export registrations are required by law to export from Argentina), placing that authority under the Agricultural Control Office (ONCCA). ONCCA is an autonomous agency of the Secretariat of Agriculture, but not technically under control of the Secretary of Agriculture. As such, ONCCA has become a very powerful body whose primary function is to control agricultural exports, as well as administer subsidy payments to agricultural producers and food processors.

3. (SBU) Prior to this change, export registrations were carried out by an office within the Secretariat of Agriculture and the system was somewhat straightforward and automatic. Under ONCCA, the application process has become much less transparent and conditional. Many exporters have complained about the arbitrary nature in which registrations are granted as well as the numerous prerequisites/requirements placed on exporters.

REGULATIONS "A DISASTER" FOR COMMODITY EXPORTERS

14. (SBU) ONCCA has several regulations and restrictions in place that significantly impede the efficiency of commodity exporters. There are two main issues that are of concern to large commodity exporters:

--Time Limits for Loading Commodity Shipments:

Promulgated in May 2008, Resolution ONCCA 543/2008 established a period of 45 days after approval of an export registration during which all commodities must be loaded on vessels awaiting export. Those time limits were modified on August 14 (by Resolution 2486/2008) to allow 90 days for wheat, 120 days for corn, and 180 days for all other products, provided that exporters pay export taxes within two days of ONCCA's approval of the required export registration (i.e., in advance of exporting the goods). If exporters choose not to pay the export tax in advance, they are required to load products within 45 days. Commodity export operations are usually structured on forward contracts that far exceed those time limits above - and sometimes up to a year in advance. As such, those time periods significantly impede normal business operations for commodity exporters. In addition, the nature of advance payment of export taxes creates difficulties for smaller sized exporting companies that cannot finance the tax prepayment in order to lock-in the longer embarkation periods.

--Retroactive Export Taxes:

Early this year Law 26.351 ("Martinez Raymonda" for its author) established that, if an increase in export taxes takes place between the date of registration and the date of export, an exporter must pay the higher tax unless the exporter can show that it had grains under its control at the time of registering the sale. "Upholding" this law, ONCCA announced in late July that 57 firms (including U.S. companies Cargill and Bunge) owe (retroactively) an estimated \$1.7 billion in export taxes on 24 million tons of grains that were registered for export in the days prior to export tax increases announced on November 7, 2007, and March 11, 2008.

AMBASSADOR MEETS WITH KEY CONTACTS ON EXPORT ISSUES

15. (SBU) On August 4, Ambassador met with President of ONCCA, Dr. Ricardo Echegaray to discuss the above concerns in support of American agricultural interests. Dr. Echegaray indicated that the week prior, he met with the Argentine Oilseeds Processing Association (CIARA) and the Grains Exporter Association (CEC) and that he was proposing a solution that would address those groups' concerns regarding newly imposed embarkation periods. His proposal (which was realized August 14 with the publication of Resolution 2486/2008) was to give exporters two options: 1) pay export taxes in advance (which would allow for longer embarkation periods and permanently fix the amount of tax due -- see embarkation periods in paragraph 4 above); and 2) the status quo. Option 1, he said, would benefit both exporters and the government, providing exporters with the logistical flexibility they need and offering the government faster fiscal income.

16. (SBU) When Ambassador asked whether ONCCA's decision to retroactively collect export taxes will be challenged in the courts, Echegaray indicated that, based on his discussion with CIARA and CEC, he felt confident that the exporters will pay in the end. He added that "what they did was illegal" which, in his view, is clear under law 26.351 and that ONCCA must "uphold the law." Commodity exporters believe this is unconstitutional because of the retroactive aspect of the law; and they were operating within the law at that time.

17. (SBU) On August 14, Ambassador met with President of Cargill Argentina, Cristian Sicardi, to discuss business implications of the above issues and brainstorm solutions. Mr. Sicardi said that not only his company, but the entire commodity exporter sector is "under attack" by the government and expressed concern about time limitations for loading grain and the retroactive export taxes being sought by ONCCA. On embarkation periods, he said that the costs of financing pre-payment of taxes will be large. In addition, the regulations are unclear with respect to requirements to physically own grains prior to registering an export sale.

18. (SBU) Sicardi indicated that, as a result of the "disaster" that

ONCCA has created for the commodity export business, his company has hired three law firms to focus on: 1) administrative issues; 2) criminal issues; and 3) customs issues. He gave examples of the onerous and arbitrary controls placed on exports that have led them to this situation. In particular, he noted a case where ONCCA prohibited registered Cargill exports due to tax irregularities with the national tax office (AFIP), whereby AFIP owed Cargill for overpaid taxes - not that Cargill owed AFIP.

¶9. (SBU) More recent Post conversations with Cargill's Hugo Krajnc indicate that it is still too early to judge the overall impact on shipping logistics with the extended embarkation periods, but the new periods will allow enough flexibility that exports will not cease, as was the concern with 45-day periods. Krajnc also indicated that in an early September meeting with ONCCA, Echegaray promised the industry and has since worked toward speeding up approvals for export registrations, although the process is still very bureaucratic and cumbersome. Also, Echegaray has reportedly given exporters a mechanism through which to request urgent approvals on a case-by-case basis for all commodities except corn and wheat, although this mechanism has not yet been utilized by Cargill.

¶10. (SBU) With respect to ONCCA's objective to retroactively collect export taxes, Law 26.397 was promulgated on September 9, 2008, which created a bicameral investigative committee to determine business irregularities by the named exporters. Although all of the committee seats have not yet been named, Krajnc indicated that many of the members that Cargill believes will constitute the committee are "not friends of the industry." Krajnc believes that the issue will become more publicized between mid-September to mid-October due to other issues taking priority in the Congress right now, such as the budget and "superpowers" legislation granting the executive branch temporary extraordinary authorities to allocate over-budget revenues without Congressional oversight, among others.

GOVERNMENT DIALOGUE WITH MESA DE ENLACE NOT ENOUGH

¶11. (SBU) Despite the unresolved problems with agricultural exporters, government officials have met with the "Mesa de Enlace" ("Liaison Board", a coordinating committee created by the four local farm lobby groups to negotiate on behalf of the entire agriculture sector) to begin dialogue on production policy issues. Since the defeat of the variable export tax project in June, the Liaison Board has met with Agriculture Secretary Cheppi on two occasions. On August 5, Secretary Cheppi, along with ONCCA's Echegaray, invited the Liaison Board to their first meeting. Secretary Cheppi then indicated that export taxes will not be modified for small producers any time soon. He again met with the Liaison Board on August 13, along with Buenos Aires Governor Daniel Scioli, to discuss the sector's priorities. In both meetings, Cheppi promised changes in the production situation for many crops, as well as a proposal for an integral agricultural policy.

¶12. (SBU) Post contacts at Federacion Agraria (FAA), one of the four lobby groups, indicate that although those two meetings were "hopeful", the government's proposals to tackle many unresolved issues were, and remain, largely hollow; and that it is clear that the government is stalling/asking for more time to define policies. For farmers, the issues of primary importance are: beef, dairy, and regional economic issues.

¶13. (SBU) On September 9, the Liaison Board held meetings with members of Congress to lobby their concerns. Reports indicate that meetings with government aligned representatives were not positive for the agricultural sector. Agustin Rossi, President of the pro-government "Official Block" made it clear that he would not deviate from any agricultural policy decisions set by President Kirchner. In separate meetings with opposition legislators, Mario Llabias, President of the Argentine Rural Confederation (CRA), restated the primary concerns of the sector and, surprisingly, he added that the next objective of the agricultural sector is to bring about the repeal of "superpowers" legislation which gives the Cabinet Chief power to re-allocate budget funding and utilize budget surpluses as he wishes. FAA contacts also indicate that the sector is mobilizing to send between 200-300 producers to visit congressmen

each day for the next week to lobby for favorable policy changes, and pressure congressmen to reject the "superpowers" extension when it is debated and voted.

Comment

¶14. (SBU) It is clear that the GOA (and particularly, ONCCA) remains a long way from resolving pressing commodity export regulatory and tax issues that affect the sector's efficiency. It appears that a key constraint on ONCCA addressing these issues expeditiously is the organization's small staff and lack of expertise in commodity export business practices. It remains unclear whether ONCCA's lack of sensitivity to the commodity export sector's logistical inefficiencies, combined with seeking export taxes retroactively, is a plan to continue CFK's divide and conquer strategy, whereby the GOA punishes large exporters to gain favor from small farmers -- who are largely critical of the large exporters and believe them to be cartelized -- or if there is a larger plan to control the sector. There is little doubt that the GOA needs fiscal revenue generated by commodity export taxes, and these ONCCA actions and regulations reduce overall potential revenue by generating inefficiencies that lower prices paid to Argentine exporters. And those lower prices are passed along to farmers. As such, farmers are committed to lobbying congress to effect long-term policy changes and limit power of the Executive. End Comment

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